

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ROGER BODINE, DAVID VALDEZ, and
CHRIS ROMERO

Charging Parties,

-v-

YELLOWSTONE COUNTY SHERIFF'S
OFFICE, BILL O'CONNOR, SHERIFF
CHUCK MAXWELL, and CAPTAIN
RICO BRENNAN,

Respondents.

Case #s

0068011956 through 0068011959,
0068011963 through 068011966, and
007012092 through 007012095

ORDER

On August 7, 2007, the Hearings Bureau began to conduct the contested case hearing in this matter in Billings, Montana. On August 10, 2007, the hearing officer assigned to the matter, Terry Spear, was unexpectedly called back to Helena to deal with a family medical emergency. On August 13, 2007, the Hearings Bureau assigned a substitute hearing officer, Anne McIntyre, but the parties did not agree the substitution. Subsequently, the Yellowstone County Sheriff's Office, Sheriff Chuck Maxwell and Captain Rico Brennan (collectively referred to in this order as Yellowstone County) requested dismissal of the case by the Hearings Bureau arguing that because the hearing was not completed within 12 months, the Department lost its authority over the proceedings pursuant to § 49-2-509(1)(b), MCA (2005). Respondent Bill O'Connor (O'Connor) also requested dismissal on similar grounds and also argued that the case should be dismissed under § 49-2-509(3)(b), MCA (2005), because he argued the charging parties did not cooperate in the Human Rights Bureau investigation.

On August 15, 2007, the Hearings Bureau issued an order denying the request to dismiss. In reaching its decision to deny the request to dismiss, the Hearings Bureau relied on Section 49-2-512(2)(b)(iii), MCA (2007). The hearing officer determined that

because Respondent O'Connor had previously unsuccessfully attempted to prevent the department from conducting the administrative proceedings, the Hearings Bureau still had authority to conduct the contested case hearing pursuant to this procedural statute.

Subsequently, O'Connor filed an appeal and Yellowstone County filed an objection with the Human Rights Commission based on the refusal to dismiss. Because the normal course of scheduling would result in the case being heard by the Commission in mid-November, the Commission chair contacted the parties and inquired as to whether the parties would agree to an expedited briefing and oral argument schedule, as Yellowstone County requested oral argument in its brief. The parties did agree to an expedited schedule.

On brief and at oral argument, Yellowstone County asserted that the Hearings Bureau erred in concluding that its motion to dismiss should be denied because it asserts the statutory changes do not apply to this case, that the 12 months had passed, and that no other statutory extension of the deadline applied. O'Connor agreed and argued that the case should also be dismissed based on his earlier grounds.

The charging parties asserted that the Hearings Bureau was correct. The charging parties further asserted that the respondents in effect stipulated to continue the case when the cases were consolidated. The charging parties also asserted that the Commission does not have authority to consider Yellowstone County's objection or O'Connor's appeal at this time on the basis that there is no provision in the Human Rights Act for an objection or an appeal at this stage of the proceedings.

Before the stage of proceedings at issue here unfolded, the 2007 Legislature amended the Human Rights Act (Act), effective July 1, 2007, through Chap. 28 (HB 76). The Hearings Bureau informed the parties to this case that the Department would apply the new provisions of the Act to the case, as the changes affected only the procedures

used in the administrative process. The Commission considered the matter on September 18, 2007. Pursuant to § 49-2-505(3)(c), MCA (2007), the Commission can only consider appeals from the Hearings Bureau concerning decisions based on a completed hearing. This statute does not provide for objections or appeals from a denial of a request to dismiss. Therefore, the Commission does not have statutory authority to consider this issue at this stage of the proceedings.

IT IS HEREBY ORDERED, that the Commission denies the objection and appeal for lack of authority to consider the issue.

DATED this ____ day of September, 2007.

Acting Chair Allen Secher
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of September, 2007.

KEVIN BROWN
ATTORNEY AT LAW
120 WEST CALLENDER STREET
LIVINGSTON MT 59047

TIMOTHY KELLY
KELLY LAW OFFICE
PO BOX 65
EMIGRANT MT 59027

MICHAEL SAN SOUCI
ATTORNEY AT LAW
2135 CHARLOTTE STREET SUITE 1A
BOZEMAN MT 59718-2741

KEVIN GILLEN & RYAN NORDLUND
DEPUTY YELLOWSTONE COUNTY ATTORNEYS
PO BOX 35025
BILLINGS MT 59107-5025

BILL O'CONNOR
O'CONNOR & O'CONNOR
208 NORTH BROADWAY SUITE 412
BILLINGS MT 59101

Montana Human Rights Bureau